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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 31 1996

In the Matter of )  
 )  
Allocation of Costs Associated with ) CC Docket No. 96-112  
Local Exchange Carrier Provision of )  
Video Programming Services )

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**NYNEX COMMENTS**

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Dated: May 31, 1996

0211

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	i
I. INTRODUCTION .....	1
II. THE COMMISSION SHOULD MOVE AWAY FROM PART 64 RULES IN THE PRICE CAP ENVIRONMENT, AND PRESCRIBE FLEXIBLE GUIDELINES THAT ENCOURAGE LEC VIDEO INVESTMENTS .....	4
A. <i>Price Caps And Need For Part 64.</i> .....	4
B. <i>Guidelines And Simplification</i> .....	7
C. <i>Encouraging LEC Competitive Entry</i> .....	8
III. THE COMMISSION SHOULD PERMIT VARIOUS COST ALLOCATION TECHNIQUES REFLECTING COST-CAUSATIVE PRINCIPLES .....	10
A. <i>Loop Plant</i> .....	10
1. <i>Direct Assignment</i> .....	10
2. <i>Usage Measurements</i> .....	11
3. <i>Allocation Based On A Ratio Of Directly Assigned Plant</i> .....	12
4. <i>Establishment Of A Cost Ceiling</i> .....	13
5. <i>Cost Allocations Based On Fixed Factors</i> .....	14
B. <i>Switching Plant</i> .....	15
C. <i>Interoffice Transmission Facilities</i> .....	16
D. <i>Expenses</i> .....	17

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
<i>E. Allocation Of Spare Facilities</i> .....	18
<i>F. Pole Attachments And Conduit</i> .....	20
<b>IV. THERE IS NO BASIS FOR EXPANDING THE TYPES OF COST REALLOCATIONS FROM REGULATED TO NONREGULATED ACTIVITIES SUBJECT TO EXOGENOUS TREATMENT</b> .....	<b>21</b>
<b>V. CONCLUSION</b> .....	<b>24</b>

## **SUMMARY**

In this proceeding, the Commission will consider possible revisions to its Part 64 cost allocation rules applying to an incumbent LEC's use of integrated network facilities to provide video programming services and other competitive offerings not subject to Title II regulation, as well as telephony and other Title II offerings. NYNEX believes that the Part 64 cost allocation rules have become much less relevant in the environment of FCC price cap regulation. In this proceeding, the Commission should provide for waiver of the Part 64 rules where a LEC is governed by FCC price cap regulation with no sharing/low-end adjustment. As any link between interstate regulated rates and costs becomes further weakened or broken, the Commission should forbear from applying, or remove, those rules.

This proceeding offers an opportunity for the Commission to simplify and streamline Part 64 requirements. The Commission should ensure that its actions in this proceeding help foster the LECs' timely, procompetitive entry into the video marketplace unhampered by unfair and arbitrary cost allocations. To the extent Part 64 applies, NYNEX proposes that the Commission continue to allow for direct assignment of costs based upon cost causation to the maximum extent possible; and for other costs to be attributed based upon an allocator logically related to cost causation whenever possible; and for remaining costs to be allocated in proportion to the preceding cost attributions.

This proceeding has been prompted by the Commission's expectation of LEC entry into the video programming service marketplace pursuant to Congress' procompetitive framework to spur competition with incumbent cable operators. It bears emphasis that such entry will necessitate investment in new plant for video; or, to a lesser extent, the reconfiguration of existing plant such that direct cost assignments can be made to nonregulated activities. There is no basis in this proceeding for revising cost allocation rules so as to drive a greater proportion of embedded telephone plant to nonregulated activities.

In Section II, NYNEX addresses in greater length the overall goals and approach that the Commission should pursue in this matter. In Section III, we address the various cost categories and allocation techniques in the order they are presented in the NPRM for comment, and emphasize cost-causative approaches. Finally, in Section IV, we show that there is no basis in this proceeding for expanding beyond current rules the exogenous treatment of cost reallocations from regulated to nonregulated operations.

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**NYNEX COMMENTS**

**I.     INTRODUCTION**

The NYNEX Telephone Companies<sup>1</sup> ("NYNEX") file these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released May 10, 1996, in the above-captioned matter.

In this proceeding, the Commission will consider possible revisions to its cost allocation rules and procedures<sup>2</sup> applying to an incumbent local exchange carrier's ("LEC's") use of integrated network facilities to provide video programming services and other competitive offerings not subject to Title II

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<sup>1</sup> New England Telephone and Telegraph Company and New York Telephone Company.

<sup>2</sup> See 47 C.F.R. Part 64 Subpart I; Sections 32.23, 32.27, 43.21, 43.22 (referred to generally herein as Part 64 rules).

regulation, as well as telephony and other Title II offerings.<sup>3</sup> The Commission's goals in this proceeding are: 1) "to give effect to the provisions of the 1996 Act, and the underlying Congressional intent, that facilitate the development of competitive telecommunications service offerings..."; 2) "to give effect to provisions relating in particular to local exchange carrier entry into video distribution and programming services markets. . ."; and 3) "to ensure that ratepayers pay telephone rates that are just and reasonable, as mandated by Section 201(b) of the Communications Act...."<sup>4</sup> Furthermore, the Commission states that cost allocation principles must balance administrative simplicity; be adaptable to evolving technologies; achieve uniform application among incumbent LECs, in particular those that must file their cost allocation manuals with the Commission; and be consistent with economic principles of cost-causation.<sup>5</sup>

NYNEX believes that the Part 64 cost allocation rules have become much less relevant in the environment of FCC price cap regulation. In this proceeding, the Commission should provide for waiver of the Part 64 rules where a

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<sup>3</sup> NPRM, ¶ 2. As the NPRM observes (¶ 1), the Telecommunications Act of 1996 (the "Act") offers common carriers four ways to enter and compete in the video programming service marketplace: 1) provide transmission of video programming on a common carrier basis under Title II; 2) provide video programming service to subscribers through radio communication under Title III; 3) provide video programming service as a cable system under Title VI; 4) for LECs, provide video programming service by means of an "open video system" ("OVS") under new Section 653 of the Communications Act.

<sup>4</sup> NPRM, ¶ 22.

<sup>5</sup> NPRM, ¶ 24.

LEC is governed by FCC price cap regulation with no sharing/low-end adjustment. As any link between interstate regulated rates and costs becomes further weakened or broken, the Commission should forbear from applying, or remove, those rules.

This proceeding offers an opportunity for the Commission to simplify and streamline Part 64 requirements. The Commission should ensure that its actions in this proceeding help foster the LECs' timely, procompetitive entry into the video marketplace unhampered by unfair and arbitrary cost allocations. To the extent Part 64 applies, NYNEX proposes that the Commission continue to allow for direct assignment of costs based upon cost causation to the maximum extent possible; and for other costs to be attributed based upon an allocator logically related to cost causation whenever possible; and for remaining costs to be allocated in proportion to the preceding cost attributions.

This proceeding has been prompted by the Commission's expectation of LEC entry into the video programming service marketplace pursuant to Congress' procompetitive framework to spur competition with incumbent cable operators. It bears emphasis that such entry will necessitate investment in new plant for video; or, to a lesser extent, the reconfiguration of existing plant such that direct cost assignments can be made to nonregulated activities. There is no basis in this proceeding for revising cost allocation rules so as to drive a greater proportion of embedded telephone plant to nonregulated activities.



In Section II, NYNEX addresses in greater length the overall goals and approach that the Commission should pursue in this matter. In Section III, we address the various cost categories and allocation techniques in the order they are presented in the NPRM for comment, and emphasize cost-causative approaches. Finally, in Section IV, we show that there is no basis in this proceeding for expanding beyond current rules the exogenous treatment of cost reallocations from regulated to nonregulated operations.

## **II. THE COMMISSION SHOULD MOVE AWAY FROM PART 64 RULES IN THE PRICE CAP ENVIRONMENT, AND PRESCRIBE FLEXIBLE GUIDELINES THAT ENCOURAGE LEC VIDEO INVESTMENTS**

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### **A. Price Caps And Need For Part 64**

The Commission notes that: “under rate-of-return regulation, costs allocated to regulated activities become the basis for regulated prices. The link between allocated regulated costs and prices under price cap regulation is less direct.”<sup>6</sup> The NPRM (¶ 62) invites comment on the need for Part 64 in the Commission’s regulation of carriers that are not subject to sharing obligations, and on whether the extent of state commission price cap regulation of intrastate rates should influence the Commission’s determination on this issue.

NYNEX agrees that the FCC’s price cap and Part 64 rules should “ensure that telephone subscribers are not forced to pay for the nonregulated

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<sup>6</sup> NPRM, n. 40.

offerings of the incumbent local exchange carrier, including video programming services....”<sup>7</sup> This will also ensure that interstate regulated rates are kept “just and reasonable” as a carrier engages in nonregulated activities.<sup>8</sup> The FCC’s price cap regime has essentially broken any direct or close link between costs and regulated interstate rates and costs.<sup>9</sup> In the 1996 Annual Access Tariff Filing, NYNEX elected a productivity factor option involving no sharing or low-end adjustments. As the Commission notes,<sup>10</sup> many price cap LECs have also selected this option. In such cases, the FCC should provide for waiver of its Part 64 cost allocation rules entirely.

The Part 64 rules were originally adopted by the Commission in an era of interstate rate of return regulation of LECs.<sup>11</sup> In the current FCC price cap environment, the relevance of regulated costs to rates is greatly diminished, and towards elimination of Part 64. For example, the Commission should consider exercising its authority under Section 10 of the Communications Act to forbear

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<sup>7</sup> NPRM, ¶ 22.

<sup>8</sup> See NPRM, ¶ 22.

<sup>9</sup> See LEC Price Cap Performance Review Order, CC Docket No. 94-1, 10 FCC Rcd 8961, ¶¶ 27-28, 274, 298-99 (1995).

<sup>10</sup> See NPRM, ¶ 61 & n. 71.

<sup>11</sup> See Separation Of Costs Of Regulated Telephone Service From Costs Of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987)(Joint Cost Order), 2 FCC Rcd 6283 (1987)(Joint Cost Reconsideration Order), 3 FCC Rcd 6701 (1988)(Joint Cost Further Reconsideration Order), *aff’d sub nom. Southwestern Bell Corp. v. FCC*, 896 F.2d 1378 (D.C. Cir. 1990). The Part 64 rules were designed to prevent cost shifting from nonregulated to regulated activities, and were never intended to be a basis for pricing. See Joint Cost Order, ¶¶ 33, 40.

may soon disappear altogether.<sup>12</sup> Accordingly, the Commission should move from applying Part 64 to LECs subject to price cap regulation without sharing/low-end adjustments.<sup>13</sup> Again, at a minimum, the FCC should waive Part 64 in such cases and simplify and streamline the Part 64 rules in this proceeding.

Regarding state regulation, NYNEX is subject to price cap or incentive regulation throughout most of its intrastate jurisdictions; and in its remaining jurisdictions such regulation is under active consideration by the state commission. The Commission has made it clear that: "States are, of course, free to establish their own division of regulated and nonregulated costs."<sup>14</sup> Indeed, the states, as they deem appropriate, can and in many instances do develop their own cost allocation rules.<sup>15</sup> Thus, the Commission should not rely on regulatory practices in the states in determining the continuing necessity for Part 64 rules in the federal jurisdiction.

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<sup>12</sup> The Commission is currently considering whether a pure price cap plan (i.e., no sharing/low-end adjustments), as now applies to AT&T, should be adopted for price cap LECs. CC Docket No. 94-1, Fourth Further Notice of Proposed Rulemaking, released September 27, 1995 (addressing the productivity offset or X-Factor in the LEC price cap plan).

<sup>13</sup> Under Section 10, the Commission is required to forbear from applying rules where, as here, the rules are not necessary to assure just and reasonable (and not unjustly or unreasonably discriminatory) rates, protection of consumers and the public interest.

<sup>14</sup> Joint Cost Reconsideration Order, n. 235; Joint Cost Order, ¶¶ 88, 90.

<sup>15</sup> For example, the New York Public Service Commission promulgated intrastate cost allocation rules in Case 88-C-136.

## B. Guidelines And Simplification

The Commission tentatively concludes that it should prescribe specific cost pools and allocation factors in this proceeding for allocating video programming and other nonregulated service costs. However, the Commission invites comment on whether it should prescribe specific rules or general guidelines in this area.<sup>16</sup>

Given the current price cap environment and diminished relevance of Part 64, NYNEX suggests that the Commission simplify Part 64 and provide for general guidelines, as set forth infra. Detailed, complex rules are impractical, and rules that provide no flexibility to account for varying technologies are premature. Carriers will likely vary significantly in how they provision video products and other nonregulated activities, as well as how they provision telephony and offer services using broadband facilities. Carriers will utilize different types of technologies and platforms, and offer different service features in the rapidly moving competitive environment. Accordingly, the Commission should avoid adopting specific, inflexible rules.<sup>17</sup>

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<sup>16</sup> NPRM, ¶ 27.

<sup>17</sup> The Commission has avoided absolute uniformity in cost allocation rules given the disparities in carriers' operations and mix of nonregulated activities. See Computer III Remand Proceedings, CC Docket No. 90-623, 6 FCC Rcd 7571, n. 46 (1991), vacated in part and remanded on other grounds, California v. FCC, 39 F.3d 919 (9th Cir. 1994); Joint Cost Order, n. 225. There is no basis for adopting a different approach here.

**C. Encouraging LEC Competitive Entry**

As noted, the Commission's goals include fostering competition and LEC entry into video distribution and programming services markets.<sup>18</sup> The Commission observes that:

an over-allocation of common costs to nonregulated activities, could dissuade companies from entering nonregulated competitive service markets, thus depriving regulated ratepayers of any benefit from the economies of scope using facilities to provide both services might have created.<sup>19</sup>

However, the Commission states that:

our rules will intentionally allocate a significant part of common costs to nonregulated services. This is appropriate because we believe that telephone ratepayers are entitled to at least some of the benefit of the economy of scope between telephony and competitive services.<sup>20</sup>

Under the Act, LECs have various ways of entering the video business, including the use of new facilities providing integrated telephony and video services in order to take advantage of economies of scope. On an economic basis, the LEC in deciding whether to enter such business will consider the additional or incremental costs to be incurred by the new business. To the extent the Commission's rules provide for an allocation of costs to the nonregulated business in excess of such additional or incremental costs, and remnants of rate of

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<sup>18</sup> NPRM, ¶ 22.

<sup>19</sup> NPRM, ¶ 20.

<sup>20</sup> NPRM, ¶ 23.

return regulation apply, this will distort economic decision making and may deter entry. This would be unfortunate because the regulated business will receive a benefit to the extent any costs (such as joint, common or overhead costs) are absorbed by nonregulated activities that do not cause those costs. This would also be unfortunate because the LECs, using integrated telephony and video facilities, stand to offer video service that will be a viable competitive alternative to entrenched cable service providers. Indeed, Congress intended that LECs be given a fair opportunity to compete with cable, under a streamlined regulatory approach free of the complexities and burdens of the FCC's video dialtone regime.<sup>21</sup>

The Commission should therefore avoid imposing regulatory or cost allocation burdens that could stand in the way of introducing competition in video and other nonregulated markets. As long as the nonregulated area is bearing some allocation of costs not caused by nonregulated activities, the telephone ratepayer is better off. At a minimum, the Commission should not stray from its long-standing Part 64 policy "to promote an equitable sharing of common costs but ... not ... attempt through cost allocation rules to arrange a subsidy for regulated activities."<sup>22</sup>

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<sup>21</sup> See Section 302(b)(3) of the Act ("The Commission's regulations and policies with respect to video dialtone requirements issued in CC Docket No. 87-266 shall cease to be effective on the date of enactment of this Act."); Joint Explanatory Statement of the Committee of Conference, pp. 56-57.

<sup>22</sup> Joint Cost Order, ¶ 109

### **III. THE COMMISSION SHOULD PERMIT VARIOUS COST ALLOCATION TECHNIQUES REFLECTING COST-CAUSATIVE PRINCIPLES**

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In this section, NYNEX recommends simple, practical, feasible guidelines to apply to relevant plant investment costs and expenses. These guidelines should permit the following: 1) Costs should be directly assigned based upon cost causation wherever possible; 2) Joint or common costs not capable of such direct assignment should be attributed based upon an allocator logically related to cost causation to the greatest extent possible; 3) Remaining costs should be apportioned based on the ratio of preceding costs that are directly assigned or attributed. This approach has the advantages of utilizing well-established principles of cost causation to the maximum extent, and of being adaptive to different technologies.

#### **A. Loop Plant**

##### **1. Direct Assignment**

The Commission invites comment on whether direct assignment can be used to apportion the costs of loop plant between regulated and nonregulated activities (such as video programming services).<sup>23</sup>

Different network architectures may be employed to provision telephony and video, and direct assignment will generally not be feasible for loop plant where both telephony and video signals will be carried over the same cable.

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<sup>23</sup> NPRM, ¶ 28.

It may be possible to directly assign the drop wires under an architecture where a separate coaxial drop would be required for video transmission to enter the set top box and a copper drop would be used for the telephone signals to enter the telephone set. However, under a switched digital video (“SDV”) architecture, which NYNEX is contemplating, a common drop will be employed for telephony and video. For such an architecture, the common costs could be allocated in proportion to the relative number of telephony and video service connections (i.e., a “virtual loop” methodology), as one example of a cost-causative methodology. This again highlights that, given the different service architectures, technologies and features to be employed by various carriers, the Commission should provide flexible guidelines that will accommodate different cost allocation techniques. The FCC should avoid a “one-size-fits-all” approach.

## **2. Usage Measurements**

With respect to allocations based on usage measurements, the Commission states that where direct assignment of loop costs is not possible, the Part 64 rules require that those costs be allocated based on “the relative regulated and nonregulated use during the calendar year when nonregulated use is greatest in comparison to regulated use during a forecasted three-year period.”<sup>24</sup> NYNEX concurs with the Commission’s tentative conclusion that, absent loop cost direct

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<sup>24</sup> NPRM, ¶ 30; see 47 C.F.R. Section 64.901(b)(4).



assignment, it is impractical to allocate costs based on usage.<sup>25</sup> The Commission correctly notes that the usage characteristics of video (and possibly other services using broadband facilities) differ significantly from those of regulated telephony.<sup>26</sup> As additional new services emerge, it is very possible that they will not share common usage characteristics with either video or telephony.

The Commission should take this opportunity to simplify its cost allocation rules for joint network plant investment where direct assignment is not possible. As the Commission notes,<sup>27</sup> such costs are apportioned to nonregulated based upon projected peak nonregulated usage over a rolling three-year period. The Commission requires carriers to report projected use (495A Report) and actual use (495B Report). If actual nonregulated use turns out to be greater than projected, investment costs are reallocated from regulated to nonregulated.<sup>28</sup> NYNEX believes that, in addition to usage being a flawed allocator, these rules are overly complicated and cumbersome. These joint network plant rules should be eliminated in favor of reliance on indirect attribution based upon a factor logically related to cost causation.

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<sup>25</sup> NPRM, ¶¶ 30-33.

<sup>26</sup> See NPRM, ¶¶ 30-31.

<sup>27</sup> See NPRM, ¶ 30.

<sup>28</sup> See Joint Cost Further Reconsideration Order, ¶¶ 16-17.

### **3. Allocation Based On A Ratio Of Directly Assigned Plant**

The Commission seeks comment on whether loop costs should be allocated based on a ratio of directly assigned plant.<sup>29</sup> NYNEX believes that such allocation would be a reasonable surrogate measure of cost causation. If drop wires can be directly assigned as discussed above, then the shared loop costs can be allocated based on the number of video drops versus the number of telephony drops. Thus, the loop costs are proportionately assigned to the customers who are actually using the loops. If loop costs cannot be directly assigned, then as discussed above, a “virtual loop” approach would be reasonable.<sup>30</sup>

### **4. Establishment Of A Cost Ceiling**

The Commission invites comment on the alternative of establishing a ceiling on total loop costs that LECs may allocate to regulated activities.<sup>31</sup> This approach does not reflect cost causation, and has no basis. This method assumes that carriers will no longer invest in loop plant. This proposal ignores the fact that fiber investment benefits both regulated and nonregulated services. Requiring

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<sup>29</sup> NPRM, ¶ 34.

<sup>30</sup> While such methodologies are not strictly based on relative demand, the Commission’s tentative conclusion that relative demand is an inappropriate allocator (NPRM, ¶ 41), is flawed in several respects. First, relative demand is similar to relative use, an allocator that has been traditionally acceptable as having a cost-causative basis. Costs are incurred because customers want service. Second, although telephone services are somewhat price inelastic, demand for video may be highly elastic. If the costs allocated to video are such that a company decides it is not profitable to enter that business, then the economies of scope envisioned by the Commission would not be realized and the entire cost of loop investment would be borne by telephone ratepayers.

<sup>31</sup> NPRM, ¶ 35.

carriers to record costs on an exchange by exchange basis would be overly burdensome and not comport with the deregulatory intent of the Act. Allocating costs based on a price cap formula is subject to the same flaws the Commission found in determining that revenues should not be used to allocate costs.<sup>32</sup> The price cap formula does not reflect the way costs are incurred, and clearly lacks a cost-causative basis.

### **5. Cost Allocations Based On Fixed Factors**

The Commission tentatively concludes that, absent a reasonable usage-based method of allocating loop costs, a fixed factor should be adopted.<sup>33</sup> The use of fixed factors may have some merit, in terms of simplicity and uniformity. However, for fixed factors to yield meaningful results they must have some reasonable basis in fact and experience, and not be arbitrary. Fixed factors for loop costs were adopted in the jurisdictional separations process only after years of experience, and after it was known that jurisdictional percentages remain stable over time.<sup>34</sup> Only after significant and stable data and experience are gathered reflecting how services use common facilities such as broadband, it may be appropriate to transition to a fixed factor as a workable solution. Prescription of a mandatory fixed factor at this point in time could be arbitrary and based on

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<sup>32</sup> Joint Cost Order, ¶ 160.

<sup>33</sup> NPRM, ¶ 40.

<sup>34</sup> See Amendment Of Part 67, CC Docket No. 80-286, 96 FCC 2d 781 (1984), aff'd sub nom. Rural Tel. Coalition v. FCC, 838 F.2d 1307 (D.C. Cir. 1988).

speculation as to possible future uses which may not materialize, or ignore services that materialize in unexpected ways.<sup>35</sup>

## **B. Switching Plant**

With respect to allocating the investment costs of switching plant, the Commission asks to what degree the duration of a call is a valid usage measurement.<sup>36</sup> The duration of a call is a valid measurement only when one is trying to allocate the costs of a call. When a service does not directly encompass the concept of a call, the duration of a call has no direct bearing on the cost. In fact, the NYNEX Cost Allocation Manual ("CAM") allocates costs of nonregulated services which currently utilize shared switching facilities, based on factors other than call duration such as the number of packets (for protocol conversion) and the number of messages (for customer dialed account recording). As with loop plant, one must carefully examine how the switching investment is used and select an allocator based on common, measurable characteristics, and

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<sup>35</sup> In all events, a fixed factor such as 50% or 72% nonregulated (see NPRM, ¶ 39) for shared loop or other common costs, would appear to have no basis in reality for NYNEX. The use of either the ratio of direct investment or virtual loop methodologies produces a similar overall allocation factor for shared network investment between telephony and video, assuming a reasonable penetration into the video market. An analysis of the hybrid fiber coaxial ("HFC") network architecture with respect to NYNEX's FCC-granted Video Dialtone Section 214 Applications for Massachusetts and Rhode Island (W-P-C-6982-83), and current engineering estimates of SDV technology, indicate that either method will produce an overall allocation factor for video at the end of the build on the order of 20% to 30% depending upon such factors as customer take rate and vendor costs.

<sup>36</sup> NPRM, ¶ 44.

based on principles of cost causation. Once sufficient experience and stable data have been gathered, a fixed factor may be developed on that basis.

**C. Interoffice Transmission Facilities**

The Commission solicits comment on an appropriate cost allocation method for interoffice trunk plant, and on whether the Commission should distinguish between such plant and loops for Part 64 purposes.<sup>37</sup>

The FCC should distinguish between interoffice facilities and loop plant for Part 64 purposes, because they are used differently within the network and have different cost structures. For example, it is much more likely that interoffice facilities will require engineering oversight when circuits riding on these facilities are connected, than will loop facilities. Loop facilities are also more labor intensive at the terminating end because they are closer to the final distribution point.

NYNEX disagrees that interoffice facilities investment costs should be allocated using a fixed factor if that will be used for loop plant. At this time it is premature to determine how interoffice facilities may be used in the provision of nonregulated services. Again, once such facilities are actually deployed in the provision of nonregulated services, allocators should be selected based on cost-causative principles, e.g., by using relative number of ports.

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<sup>37</sup> NPRM, ¶ 46.

#### **D. Expenses**

The Commission invites comment on the Part 64 treatment of network-related expenses, maintenance expenses, marketing expenses and overheads.<sup>38</sup> Generally, Part 64 has worked well with regard to the allocation of expenses. Network related expenses generally follow the allocation of the related plant investment.

Maintenance expenses have been directly assigned where possible based on time reporting, which has provided appropriate tracking, and the remainder is indirectly attributed based on investment. NYNEX disagrees with the Commission's tentative conclusion (NPRM, ¶ 48) to use a fixed factor to allocate maintenance expenses, in particular the same factor the Commission proposes to use to allocate the maintained plant itself. Even if plant investment is assigned based on a fixed factor, the dollars of plant allocated to a particular category bear little or no relationship to the amount of maintenance such plant requires. Maintenance is largely a function of age, location, sensitivity to elements, etc. and not to the cost of the investment.

With regard to marketing expenses, it is likely most of the expenses will be directly assignable, and those that cannot should continue to be apportioned using the marketing general allocator. Finally, the current approach to allocating

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<sup>38</sup> NPRM, ¶¶ 47-50.

overhead expenses -- based on the proportion of attributable expenses -- is simple and reasonable for such residual expenses, and should be retained.

**E. Allocation Of Spare Facilities**

The Commission invites comment on how “spare facility” (or “spare capacity”) costs should be allocated between regulated and nonregulated activities, in particular video programming service costs.<sup>39</sup>

Generally speaking, Part 64 allocates the costs contained in a Company’s books and records. “Spare facilities” is more an engineering concept than a trackable cost. The cost of spare capacity is not separately accounted for; it is embedded in the cost of telecommunications plant. All plant, including spare, is assigned to cost pools. Thus, whenever a unit of plant in a shared cost pool is allocated between regulated and nonregulated activities, the associated spare capacity is similarly allocated. In this respect, the Commission has observed that Part 64 cost allocation rules ensure that the costs of spare capacity are allocated in the same way as the underlying overall investment category, and are not borne just by telephone ratepayers.<sup>40</sup>

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<sup>39</sup> NPRM, ¶ 53.

<sup>40</sup> See Joint Cost Further Reconsideration Order, ¶ 40 & n. 40.

Accordingly, requiring special allocation rules or additional cost pools for spare would be unnecessary and administratively burdensome.<sup>41</sup>

The Commission expresses concern as to whether embedded spare plant allocated to telephony may be used for video or other future nonregulated activities.<sup>42</sup> To introduce a nonregulated high capacity service such as video programming, embedded plant (such as loops) usually must undergo major reconstruction to accommodate the needed capacity.<sup>43</sup> This may involve an overlay of fiber or coaxial cable and the appropriate electronic equipment at either end to transmit the signal. In this scenario, the nonregulated plant can be directly assigned on a cost-causative basis. Cost allocations based upon directly assigned or attributed amounts can be performed which altogether will reflect relative growth of nonregulated and regulated activities.

It is important to emphasize that broadband facilities will likely be used for many telephony services, and not only for video programming or nonregulated activities. Thus, for example, certain new builds only for telephony can be directly assigned to regulated. Similarly, new builds only for video

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<sup>41</sup> Common, spare costs do not change because of circuit assignments. Facilities can become spare at any time due to disconnects or rearrangements. It would be a regulatory nightmare to require a cost pool change whenever a facility moves between circuit use and spare.

<sup>42</sup> NPRM, ¶¶ 53-54.

<sup>43</sup> The exception is ADSL technology used for video, which makes use of existing copper loop plant to provide video transport. However, all such costs of the ADSL equipment can be directly assigned to nonregulated.



programming or other nonregulated activities can be directly assigned to nonregulated. Hybrid builds can be allocated using cost-causative principles.

#### **F. Pole Attachments And Conduit**

New Section 224(g) of the Communications Act requires a utility providing telecommunications or cable services to “impute to its costs of providing such services (and charge any affiliate, subsidiary, or associated company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.”<sup>44</sup> The Commission invites comment on how this requirement should affect its rules for allocating outside plant costs between regulated and nonregulated activities.<sup>45</sup>

NYNEX believes that the Commission’s current rules adequately cover the allocation of pole attachment costs to nonregulated activities, and do not need to be amended. LEC provision of pole attachments, conduits, ducts, or rights-of-way is classified as a regulated activity.<sup>46</sup> To the extent a LEC or affiliate nonregulated activity (such as LEC OVS) utilizes LEC pole attachments, etc., the Commission’s rules provide that the nonregulated activity will be charged the tariff rate or prevailing market price, as applicable.<sup>47</sup> For such transaction, the

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<sup>44</sup> Pole attachment rates also include charges for conduits, ducts, and rights-of-way. 47 U.S.C. Section 224(a)(4).

<sup>45</sup> NPRM, ¶¶ 55-56.

<sup>46</sup> See 47 C.F.R. Section 32.23.

<sup>47</sup> See 47 C.F.R. Sections 64.901, 32.27.